

**RAIL SERVICE COMPETITION COUNCIL
COUNCIL MEETING
MINUTES**

**Thursday
May 17, 2007
11:00am – 3:00pm**

**Park Plaza
Helena, MT**

COUNCIL MEMBERS PRESENT: Doug Miller, Larry Bonderud, Bill Fogarty, Dan Bucks, Mike O'Hara, Carla Allen, Evan Barrett and Nancy K. Peterson

COUNCIL MEMBERS ABSENT: Rep. Tom McGillvray, Jim Lynch, Sen. Ken Hansen

REPRESENTING COUNCIL MEMBERS: Dick Turner for Jim Lynch

GUESTS: Larry Finch, Mike Opar, George Paul, Howard Nash, Lola Raska, Barbara Ranf, Zia Kazimi, Paul McCarthy, Patty Schlaeger and Lesa Evers.

RSCC STAFF: Terry Whiteside, Gloria O'Rourke

1.0 Meeting Called to Order

Chairman Mike O'Hara called the meeting to order. Chairman O'Hara requested roll call and asked for introductions from the audience.

2.0 Approval of Minutes from February 26th Meeting

Larry Bonderud moved to approve the February 26th RSCC meeting minutes; Evan Barrett seconded the motion. All voted in favor to approve the minutes.

3.0 RSCC Budget and Legislative Outcome of HB26

Evan Barrett reported HB26, a bill sponsored by Representative Tom McGillvray to revise the Rail Service Competition Council passed both houses. The bill was originally submitted with a recommendation by the RSCC for \$200,000 per year for operations and to provide staff on a permanent basis, plus funds for services as needed. Representative McGillvray felt uncomfortable introducing the bill at that amount and reduced the bill to \$75,000 per year; the RSCC again requested \$200,000. When the bill came before the House Appropriations Committee, the bill was reduced to \$50,000 and removed the Director of Revenue from the Council as well as the Chief Business Officer from the Governor's Office of Economic Development.

The bill passed the House and was taken up by the Senate Transportation Committee. This committee returned Director Dan Bucks and Chief Business Officer Evan Barrett to the Council. It was hoped that when the bill would appear before the Senate Finance and Claims committee, funding could be restored. The bill, however, was sent directly to the floor and passed as written.

As per the bill language, an individual with coal shipping experience will be added to the Council and the operations of the council will be transferred to Montana Department of Transportation. It was noted a report of progress needs to be submitted to the next session of the

legislature. It will be up to Montana Department of Transportation to work with the RSCC to determine how the \$50,000 per year will be allocated.

Evan Barrett explained that the individual to be added to the RSCC will be appointed by the Governor. The default effective date is October 1st. The individual could attend the RSCC meetings prior to this date but could not be reimbursed for expenses until October 1st.

The RSCC's future \$50,000 annual budget could not be addressed during this meeting as Jim Lynch was unable to attend. Evan Barrett estimated after removing meeting fund expenses, the RSCC's current remaining funds will be \$42,000. Mr. Barrett said these funds need to be obligated by June 30th of this year so that the funds are available through the next year.

In a different bill, the Legislature passed a \$3 million appropriation for litigation and preparation for litigation if needed relating to rail rates in Montana. Should a law suit happen, it would involve the Surface Transportation Board, Montana Department of Transportation and Montana Department of Justice. As this litigation relates to the RSCC mission, the RSCC will be kept informed and involved in the information flow.

4.0 Shipper's Day Update

Chairman Mike O'Hara reported on his attendance in Washington, D.C., regarding March 15th Shipper's Day events. Chairman O'Hara spent time in face-to-face meetings with Montana and Idaho's Congressional delegations as well as staff of Representative Rehberg. Senator Baucus, Senator Tester and Representative Rehberg signed on as co-sponsors for Senate Bill 953, the Railroad Competition and Service Improvement Act 2007. Chairman O'Hara said the face-to-face visits were essential and very productive. Chairman O'Hara also met with representatives from grain growers organizations and members of the Wheat and Barley Commission to let them know the RSCC is behind these issues and supportive. Chairman O'Hara recommended another individual from the Council attends this event next year.

5.0 Technical Assistance Update

Terry Whiteside, of Whiteside and Associates, updated the RSCC on the following issues; the report is available online at http://rscc.mt.gov/docs/Whiteside_RSCC_Report_05_17_2007.pdf

1. Rail Shipper Day – a resounding success
2. S.953 Rail Competition and Service Improvement Act introduced March 21, 2007 with eleven co-sponsors including Senator Max Baucus and Senator John Tester
3. HR 2125 Rail Competition and Service Improvement Act introduced May 3, 2007 – 29 co-sponsors including Rep. Dennis Rehberg. Note: S.953 and H 2125 are identical to enable the bills to pass in both the Senate and the House. These are not re-regulation bills.
4. Massive coalition formed including Agriculture, ARC, CURE, American Chemistry Council, Edison Electric Institute, National Rural Electric Coop, United Transportation Union and many more. So many are coming on board because they are all captive shippers at some point in some way.
5. Look for co-sponsorship to go up very quickly now

6. Railroads are pushing a tax infrastructure bill (S. 1125) in the new Congress.
7. Montana Rail Grain Transportation Survey & Report 2006 is released
8. Two new shuttle facilities announced in Montana (Moore, Westby)
9. Outline of plan for development of transportation competitive alternatives by RSCC
10. Governor's approved budget includes \$3MM to address STB/Rail Issues

Regarding number nine above, Terry Whiteside suggested the RSCC, with its vast knowledge base in its membership, needs to initiate development of focus plans to address growing industry/port needs that are being curtailed by lack of transportation competition. Mr. Whiteside suggested forming three or four working groups to address industry specific issues relating to transportation competition or lack of it.

After some discussion by the Council, the four working group categories are:

1. Coal
2. Ports/Intermodal
3. Industrial/Forest Products/Minerals
4. Agriculture

Problems these industry specific working groups could identify and address may include build outs/build ins, value added issues, methodologies for financial support for identifying a CORE system, developing a CORE system, etc., and ultimately reporting all findings to the legislature.

Evan Barrett moved for Chairman O'Hara to put together a structure that reflects the four working group recommendations and obtain requests from board members which group they want to serve under. The motion was seconded by Russ Hobbs; all voted in favor of the motion.

After much discussion, the first task of each working group is to identify the challenges that need to be overcome in each industry sector. Strengths and opportunities should be identified as well, then proceed to solutions.

Regarding identification of CORE rail in Montana, Dick Turner suggested the RSCC hold off on this project as Montana Department of Transportation needs to update its state rail plan. A logical starting point for the CORE system would be to collect data. As this is what Montana Department of Transportation will be doing as part of the state rail plan update, the RSCC will have data in hand by the end of the year.

Working groups will meet via phone and/or email discussion between RSCC meetings, with a designated RSCC team leader, to formulate a report covering, at a minimum, the following items:

- a. Effects on the industry coming from lack of rail competition
- b. What impediments are there to develop of transportation alternatives?
- c. Development of workarounds and transportation alternatives to counter the effects including working outside the state boundaries
- d. What ingredients/assets/legislation would have to come together to be able to develop suggested or required transportation alternatives? Development of action items to accomplish workarounds/development of transportation alternatives

- e. Suggested timetable to put action items in place
- f. Additional items considered important to group

In conclusion of his report, Terry Whiteside presented each Council member with a final copy of the Montana 2006 Farm Producer Survey. The survey information will assist the RSCC in moving forward.

6.0 MDT Intermodal Study

Dick Turner, Bureau Chief, Montana Department of Transportation (MDT) Multimodal Planning, described a project being funded by MDT's research program. Every year the department solicits proposals for research projects. Larry Bonderud submitted a project to address the declining container and trailer flat car service facing Montana. When the facility closed in Shelby, the reason given was lack of volume to provide service. Mr. Bonderud requested research that would lead to a solution to provide enough business to attract interest of Class One railroads.

Dick Turner reported a technical panel was formed made of experts in this area to investigate the matter. The panel developed a scope of work for a consultant project. It is to be a phased project as the data collected in Phase One will determine if the research/project should go on to Phase Two. It is suspected that many of the containers and trailers are leaving Montana empty. If this is indeed true, a way needs to be found to utilize this resource. A kickoff meeting will be held in late June with a six month timeline for completion of Phase One.

7.0 Rail Updates

7.1 Union Pacific (Evan Barrett and George Paul) Evan Barrett gave an update on UP's venue issue related to injuries; no bill was introduced throughout the legislative session. UP was to show, if after passage of the law two years ago, there were abuses to the law. As nothing has been forthcoming, it is assumed the law passed last session is functioning well enough.

George Paul reported traffic at the Port of Montana is steady. Lumber traffic is down a bit but all else is off to a good season.

7.2 Canadian Pacific (Larry Bonderud) Larry Bonderud reported CP, as a Class One railroad is doing well. As traffic has leveled recently, CP has furloughed 300 people. Larry Bonderud noted it is interesting to follow the Alberta economy to see what links exist between Alberta and Montana. Mr. Bonderud said the products moving north through Montana are phenomenal. There are currently 14 major skyscrapers under construction in downtown Calgary; the economy is booming with labor shortages. Mr. Bonderud suggested the RSCC members visit the CP website at <http://www.cpr.ca> to review its approach to non-rail served communities.

Both Nancy K. Peterson and Evan Barrett noted the effect on Montana's economy as a result of other area's boom. Montana now has the lowest unemployment rate in the nation of 2%. But this low rate is reflective of out migration and increased activity. People are leaving Montana for better wages as Montana ranks 49th in wages. The anomaly is in Indian Country where there are high birthrates and low out migration.

7.3 Montana Rail Link (Evan Barrett) Evan Barrett had nothing new at this time to report on MRL. Howard Nash reported traffic is steady but has seen a huge drop in out bound forest products. There is no reduction for in bound forest products. With the closing of Stimpson Lumber, out bound products will decrease even more.

7.4 BNSF Railway (Barbara Ranf) Barbara Ranf had a conflicting meeting and was not able to provide information at this time.

7.5 Central Montana Railroad (Carla Allen) Carla Allen reported CMR is at the end of shipping last year's crop. Construction projects are underway with several new projects in the works. CMR is gearing up for its 14th year with the dinner train.

7.6 Watco, Yellowstone, Mission Valley, Rarus, others Paul McCarthy, of Rarus Railway, reported the access issues he brought to the council in December of 2006 have not been resolved. Paul reported to the council, now as a representative of Patriot Rail, a company which recently purchased Rarus. Paul McCarthy explained Patriot Rail is a new startup with Rarus Railway being its second excursion train purchase; six more purchases are planned by the end of the year. Patriot Rail and its assets will enable Rarus to grow and bring new industry to the area; Patriot expects to double its workforce in the next few years.

Paul McCarthy invited the RSCC members to ride a dinner train as the guest of Patriot Rail on the evening of May 25th. Paul was thanked for this kind invitation.

Evan Barrett congratulated Paul McCarthy and thanked him again for the invitation. Mr. Barrett noted that under state law, council members may not be able to accept the invitation. Evan will contact state legal counsel and send out any guidelines relative to the invitation.

8.0 Consideration of Contracting for Service

Evan Barrett asked the RSCC to consider using some of the \$42,000 available from FY2007 to fund the exploration of taxation and its effect on coal and rail service issues. Taxation and the evaluation of taxation surrounding transportation in Montana is part of the charge of this council. There are many opinions on the matter, but little factual documented information. For example, if the coal severance tax were to be reduced, would that make a difference in freight rates? Does the severance tax have a detrimental effect on coal production in the state because the tax increases freight rates? What is the role of Montana's tax on Montana's coal development?

It would be beneficial for the RSCC, through an independent economic analysis unit, to provide the state information on tax issues and other issues that apply to our mission. It would be extremely beneficial to go into the next legislative session knowing the role of the severance tax and other tax issues related to coal.

Toward that end, Mr. Barrett spoke with Scott Rickard, Center for Applied Economic Research, at MSU, Bozeman. Mr. Rickard has experience with these issues and would be willing to conduct the research. As there is not time to conduct a full Request For Proposal, there is a procurement challenge. The RSCC could, however, contract through what is called an interagency transfer with another government agency, such as the Center for Applied Economic Research. Mr. Barrett suggested working with the Center because of the procurement issue, the resources and credibility the center has to offer, the need to obtain clarification on taxation issues and for the flexibility of a phased structure in conducting the research.

After some discussion, Evan Barrett moved for the RSCC to authorize the Chair to execute on behalf of the Council a contract to focus on railroad and the Coal Severance Tax vs. rate competition issues with flexibility to adapt the mission as progress and research develop. Larry Bonderud seconded the motion. All voted in favor of the motion with the exception of Russ Hobbs who voted against.

9.0 Agenda Items for Next RSCC Meeting

9.1 Working Group updates

9.2 Budget decisions from MDT

9.3 Technical Assistance Update

9.3.1 Terry Whiteside

9.3.2 Center for Applied Economic Research

9.4 MDT Intermodal Study Update

9.5 Rail Updates

10.0 Next Council Meeting

As Helena appears to be a good location for most of the Council, the next meeting will be held in Helena. The next suggested date is August 22nd, with the meeting beginning at 10:00am and concluding by 2:00pm. Dick Turner will check to on availability of the Commission Room.

11.0 Comments or Issues from Council Members None at this time.

12.0 Formal Public Comment Period

Terry Whiteside informed the RSCC on a novel class action law suit filed last Monday by Dustpro out of Phoenix. Dustpro is filing an antitrust lawsuit for non regulated rates on fuel surcharges. As fuel surcharges since 1993 have been in lock step together, non regulated rates will be investigated. As the STB addresses regulated rates, this case is going after the rates the STB does not set and wants fuel charges back.

Patty Schlaeger, Executive Director of the Transload Distribution Association, Azle, Texas, shared with the RSCC that the items she heard discussed today are the same in other areas and even in other countries. Patty recently attended a meeting involving trade groups from Canada and Mexico where problems with the lack of rail equipment and lack of rail competition were the main focus. The decrease in corn exports to Mexico is causing a rise in the tortilla costs; as the trend increases to grow corn for fuel, the effect on food costs will continue to magnify.

Patty Schlaeger also reported ports in Mexico are now specifying commodities for each port and Mexico is opening new ports to help alleviate congestion.

Due to the lack of rail equipment, a third party approach is becoming the solution. As flat cars are no longer available, companies that own private rail equipment, including containers and locomotives, are increasing.

13.0 Adjournment

With no further business, Chairman O'Hara adjourned the meeting.